

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Qwest Communications)	
International, Inc.)	
)	
Consolidated Application for Authority)	WC Docket No. 02-314
To Provide In-Region, InterLATA Services in)	
Colorado, Idaho, Iowa, Montana, Nebraska,)	
North Dakota, Utah, Washington and Wyoming)	

REPLY OF TOUCH AMERICA, INC.

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REPLY OF TOUCH AMERICA, INC.

Pursuant to the Commission's September 30, 2002 Public Notice in the above-referenced proceeding, DA 02-2438, Touch America, Inc. ("Touch America") hereby submits its Reply to the comments submitted in response to the above-captioned Consolidated Application of Qwest Communications International, Inc. ("Qwest") for Authority to Provide In-Region, InterLATA services in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming ("Application").

I. INTRODUCTION AND SUMMARY

The comments in this proceeding confirm Touch America's position that Qwest's Application continues to fall far short of statutory requirements. Qwest has failed to demonstrate that it is in compliance with fundamental provisions of the Telecommunications Act of 1996 ("Act").¹ First, Qwest's supposed "quick-fix" of its 272 problem is no fix at all. Qwest Long

¹ Touch America is also concerned about the level of Commission review at this point. Shortly after Qwest withdrew its previous two applications, it issued a statement announcing that it would be able to correct what it perceived to be the only failing of those applications by creating a new long distance affiliate. In doing so, it implied that the Commission shared that perception

Distance Corp. (“QLDC”), as a member (albeit new member) of the Qwest corporate family, is presumably subject to the same corrupt accounting policies, guidelines and controls, and the implementation of those policies, guidelines and controls, that have given rise to federal investigations and caused Qwest to undertake a comprehensive analysis of its practices.² Inasmuch as these accounting policies, guidelines and controls govern *all* of the Qwest entities, Qwest is not able to demonstrate that QLDC complies with section 272 of the Act.³

Indeed, as a new entity, QLDC cannot demonstrate a history of compliance with financial reporting requirements and, therefore, the Commission has no basis on which to make a predictive judgment as to whether QLDC will provide its long distance services “in accordance with the requirements of section 272.”⁴ In a similar vein, QLDC cannot be said to be GAAP compliant even if it is not tainted by Qwest’s accounting policies, guidelines and controls because, until it actually prepares and presents financials, there is no way to know. While it is

and accepted, if not offered, that correction. (Indeed, throughout the weeks preceding the withdrawal, Qwest and the Commission met on several occasions. When Touch America protested because it was not invited to those meetings, even though it was required to invite Qwest to its meetings with the Commission, it was told that the topic of the meetings was to discuss the section 272 affiliate issue.) Then, on the very day that Qwest filed this new Application and requested an expedited comment schedule, the Commission issued such a schedule.

² Qwest’s analysis, which is ongoing and with no end in sight, has already resulted in a restatement of nearly \$1 billion in revenues.

³ Although section 272 does not, *per se*, require the Bell Operating Company, Qwest Corp. (“QC”), to comply with Generally Accepted Accounting Principles (“GAAP”), Part 32 of the Commission’s rules do impose such a requirement. In fact, because the rules require QC to comply with GAAP, the Commission adopted a similar requirement for its section 272 affiliate. In this manner, the Commission believed it could conduct a “uniform audit trail,” *i.e.*, have the ability to compare oranges with oranges. By Qwest’s own admission, however, QC is not GAAP compliant and, therefore, the Commission cannot conduct an oranges to oranges comparison whereby it can, and will be able, to detect and correct cross-subsidization and discriminatory conduct.

⁴ See 47 U.S.C. §271(d)(3)(B).

easy for a company to claim that its records, books and accounts are GAAP compliant, the proof is in the doing. Indeed, the parties to this proceeding have demonstrated that there is already evidence that QLDC has likely already run afoul in certain respects of the competitive safeguards underlying section 272.

In addition, other than its bare assertions that QLDC will operate as a “switchless reseller,” Qwest has failed to show that QLDC will actually provide in-region, interLATA services. To the contrary, it is clear that QLDC is a placeholder for the real affiliate, Qwest Communications Corp. (“QCC”), and was formed merely as an attempt to overcome what Qwest views as a technicality of the Act: the requirement to provide in-region, interLATA services through a bona fide operating affiliate. At the same time, Qwest has taken the issue away from the state commissions, compromising their consultative role on this important matter. In short, to permit Qwest to carry out its plan would make a mockery of the Act and the underlying goals of detecting and preventing cross-subsidization and discrimination.⁵ It is therefore imperative that the Commission conduct an investigation into this matter.⁶

⁵ These objectives were the underpinnings of the Modified Final Judgment, where it was decided as a matter of policy and law that discrimination and cross-subsidization hurt the monopoly ratepayer who, due to the shifting of costs from a competitive enterprise to a monopoly, paid artificially high rates. At the same time, the competitor is required to compete with rates that are artificially low. Coupled with discriminatory treatment, nothing could be more pernicious to the very competitive market that section 271 seeks to serve.

⁶ For instance, what policies and procedures are in place, if any, for such corporate functions as operations, human resources, and marketing and sales, to name a few? From whom and on what basis does QLDC obtain office space, furnishings and supplies? What are the bylaws of QLDC? Does QLDC have an independent business plan? What parts of QLDC’s operations are or will be outsourced, to whom and on what terms and conditions? Without answers to these and other related questions, it is impossible to determine whether QLDC is legitimate and whether it will engage in unlawful discrimination and cross-subsidization with its affiliates.

The comments also make clear that the section 272 issue is not the only dispositive issue for this Application. Substantial evidence exists that Qwest continues to be in violation of section 252 of the Act as a result of its failure to file and make available to other carriers certain agreements that it entered into with competitive local exchange carriers (“CLECs”). Further, the impact of the unfiled agreements – and Qwest’s attempt to silence its critics through such agreements – on the record in this proceeding is, at best, unknown. The comments also clearly demonstrate that serious issues remain with respect to Qwest’s Operational Support Systems (“OSS”), UNE prices and other issues of critical importance to the viability of competitors.

In short, the comments show that Qwest’s refiled Application raises more questions than it answers. Qwest’s “band-aid” approach to the deficiencies in its Application must be rejected in favor of a full airing and analysis of all relevant and material issues. Qwest must be made to address these issues in a meaningful and serious way, not by its usual side-stepping and promises of future good behavior. As it has failed to do so, the Application must be denied.

Indeed, Qwest has continued to show its true colors, as it persists in its efforts to circumvent its obligations and mislead regulators. In its consultative report filed with the Commission on August 1, the Montana Public Service Commission (“Montana PSC”) directed Qwest to file a revenue requirement and rate design case for purposes of providing an opportunity to fully revisit the price squeeze issues raised by the Montana PSC and the Department of Justice (“DoJ”).⁷ Qwest ignored the Montana PSC’s order and, instead, has proposed an industry-wide collaborative effort that fails to address the Montana PSC’s price

⁷ See Comments of the Montana Public Service Commission (“Montana PSC Comments”) at 2. See also Evaluation of the U.S. Department of Justice, WC Docket No. 02-189 at 5, n.17 (filed August 21, 2002) (“[t]he DoJ supports the Montana PSC’s requirement for Qwest to file

squeeze concern.⁸ As a result of Qwest's decision to ignore the Montana PSC's directive to file a revenue requirement and rate design case, the Montana PSC concludes that Qwest's in-region, interLATA entry is not in the public interest.⁹ Qwest has once again shown its predilection to do as it wants, despite its obligations to the contrary.

Similarly, it now appears that Qwest has tried to mislead regulators with respect to the Mechanized Loop Test ("MLT") it conducts for CLECs and the availability of the results of such tests. A former Qwest employee declares that, although Qwest employees routinely run an MLT as part of the provisioning process for hot-cut loops, Qwest personnel were instructed during visits from Commission staff to refrain from running those tests.¹⁰ That is, Qwest directed its personnel to hide the MLT tests from regulators.¹¹ A memorandum accompanying the employee's declaration explains that Qwest was trying to "diminish the visibility to MLT during these visits for the sole purpose of protecting access to [its] legacy systems."¹² The email goes on to explain that "CLECs have specifically asked for access to the MLT . . . [w]e believe this is a part of our legacy system we want to keep proprietary [and] as a result we don't want to bring attention to it in front of the FCC as they may have a tendency to respond to CLEC requests in a manner which may be unfavorable to us."¹³ Although Qwest has tried to deny or explain away the employee's account,¹⁴ the memorandum speaks clearly for itself. Qwest continues to try to

revenue and rate materials to enable a review of the intrastate access and retail rate structure").

⁸ See Montana PSC Comments at 2.

⁹ *Id.* at 2-3.

¹⁰ See Comments of AT&T Corp. ("AT&T Comments") at 3-4.

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ See Letter from R. Steven Davis, Senior Vice President Policy and Law, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1-5 (filed October 21,

deceive regulators in an effort to avoid its obligations to its competitors. As the DoJ found, “[a]lthough the substantive effect of the alleged action remains unclear, the procedural implications are disturbing.”¹⁵ The DoJ therefore recommends that the Commission assure itself that it has full and accurate information with regard to this allegation.”¹⁶

Again, Qwest’s conduct demonstrates that this train needs to be slowed down, and a careful and serious review and analysis of these issues must be undertaken, before Qwest is permitted into the in-region, InterLATA market. The Commission should not be rushing to judgment on this Application, while outstanding questions on important issues remain.¹⁷ Qwest has failed to provide sufficient support to enable the Commission to make these determinations and, as a result, the Application must be rejected.

It is also imperative that the Commission conduct an investigation into this matter. Qwest’s accounting polices, guidelines and controls are flawed. As a result, QC’s and QLDC’s books are flawed. Qwest’s answer is to create a sham company in an attempt to “cure” the problem, which is nothing more than a placeholder for QCC. At the same time, Qwest is under investigation by the Securities and Exchange Commission and the criminal division of the DoJ. Its current and former executives are bobbing and weaving before Congress in a vain attempt to

2002).

¹⁵ See Evaluation of the U.S. Department of Justice at 4-5 (filed October 22, 2002)(“DoJ Comments”).

¹⁶ *Id.* In addition, the California Public Utilities Commission (“CPUC”) this week fined Qwest Communications Corp. \$20.3 million for slamming and cramming thousands of customers during 1999 and 2000. The CPUC found that, in some cases, third-party verification tapes or letters of authorization confirming the switches were falsified, further demonstrating Qwest’s commitment – or lack thereof – to comply with the law.

¹⁷ See DoJ Comments at 5, n. 22 (in addressing the issues raised by Eschelon and WorldCom related to the reporting of customer-affecting troubles occurring immediately after conversion, missing usage records and the issuance of completion notices when orders have not yet been completed, the DoJ states “[t]he extremely abbreviated briefing schedule established by

avoid allegations of “cooking their books.” These same executives are also under suspicion by the Attorney General of New York. Qwest has also admitted to violating section 271 by providing in-region, interLATA services under the guise of “lit capacity IRUs.” It has entered into “secret” discriminatory deals that have skewed the very data on which its Application is based. It has now also come to light that Qwest purposely and unilaterally withheld information from the Commission (which, to those companies, like Touch America, who have had to deal with Qwest, should come as no surprise). Of course, these matters do not even address the operational and performance issues raised in this proceeding. Where does it stop and how much does it take? The Commission’s mandate under the Act and the Chairman’s position on the President’s Corporate Fraud Task Force require nothing less than full disclosure and an accounting of Qwest and its nefarious activities before its Application can be considered, much less accepted.

II. ARGUMENT

A. The comments demonstrate that Qwest’s attempted “quick-fix” of its section 272 problems is no fix at all and Qwest remains unable to demonstrate compliance with section 272.

The comments filed in this proceeding make clear that Qwest has once again failed to show compliance with section 272 of the Act. In addition to the structural requirements and other pro-competitive safeguards, section 272 requires the long distance affiliate of a Bell Operating Company (“BOC”) to maintain its books, records and accounts in accordance with GAAP, and the BOC to account for all transactions with its long distance affiliate in accordance

the Commission has led the Department to note these issues, but not resolve them”).

with GAAP.¹⁸ In the absence of these safeguards, a BOC could discriminate in favor of, or subsidize the operations of, its long distance affiliate. For these reasons, the Commission has required a BOC 271 applicant to provide “actual evidence” that it is in compliance with its section 272 obligations and will remain so in the future.¹⁹ Qwest has failed to provide sufficient evidence of section 272 compliance and its Application must therefore be denied.

As demonstrated by AT&T, the fact that Qwest’s accounting problems are endemic to all of the Qwest companies, there is no reason to believe – indeed, there is every reason to doubt – Qwest’s assertions that QLDC and the transactions between QLDC and QC are GAAP compliant and will remain so in the future.²⁰ Qwest’s accounting problems extend to its entire corporate family, including QLDC. Qwest has acknowledged that its policies, guidelines and controls are inadequate and need strengthening and, as a result, is currently undertaking a review of these policies, guidelines and controls.²¹ At this time, Qwest does not know the full extent of its accounting problems or when its analysis will be completed,²² yet, as stated by WorldCom, Qwest’s accounting policies themselves (and not just Qwest’s compliance with established

¹⁸ 47 U.S.C. §§ 272(b)(2) & (c)(2); *In the Matter of Implementation of the Telecommunications Act of 1996, Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, 11 FCC Rcd. 17539, 17618, ¶ 170 (1996) (“*Accounting Safeguards Order*”).

¹⁹ See *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, 12 FCC Rcd. 20543, ¶ 55 (1997) (“*Michigan 271 Order*”).

²⁰ See AT&T Comments at 14-17; 23-28.

²¹ See “Qwest Communications Reports Second Quarter Results; Achieves Positive Free Cash Flow; Revises Guidance For Remainder of 2002,” at 2 (August 8, 2002) (“August 8 Press Release,” attached hereto as Exhibit A) (“[t]he company is continuing to analyze its accounting policies and practices in consultation with its new auditors . . . [i]n addition, the company has commenced a review of its internal controls”).

²² See August 8 Press Release at 2 (“the company cannot state with certainty when a restatement will be completed”).

policies) may be improper, and it is possible that QLDC inherited the same policies that currently are under review for their GAAP compliance.²³ Consequently, Qwest cannot at this time demonstrate that QLDC complies with GAAP or that it will comply with GAAP in the future.

In addition, the fact that the BOC, QC, is not compliant with GAAP further undermines Qwest's assertions of section 272 compliance. The requirement that a BOC and its long distance affiliate comply with GAAP permits "a uniform audit trail."²⁴ If one entity is not GAAP compliant, the audit trail is compromised. In other words, if QC and QLDC have different accounting systems, a regulator looking to detect discrimination and cross-subsidization would be faced with comparing apples with oranges and, therefore, unable to make any definitive findings.

In sum, Qwest has failed to demonstrate in any meaningful way that its corrupt accounting policies, guidelines and controls have not infected QLDC (and will not do so in the future). As a result, its blanket assertions of 272 compliance are not credible.²⁵ It is clear that until Qwest has fully analyzed, reformed and implemented its accounting policies, guidelines and controls throughout its entire organization, section 272 compliance cannot be found.²⁶

Further, QLDC lacks the historical background necessary for a credible finding of GAAP compliance. The Commission has determined that "past and present behavior of the BOC

²³ See Comments of WorldCom, Inc. ("WorldCom Comments") at 20.

²⁴ See *Accounting Safeguards Order* at ¶170.

²⁵ Alternatively, if Qwest has developed policies and procedures that are unique to QLDC, they should be made available for public review and comment.

²⁶ See AT&T Comments at 16 ("under well-established accounting standards, there can be no finding that, as required by section 272(c)(2), transactions between QC and QLDC comply with GAAP or, as required by section 272(b)(2), that QLDC will maintain its 'books, records and accounts' in accordance with GAAP until Qwest has completed its internal investigations, revised its deficient policies, and put into place and tested new, compliant controls").

applicant provides the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272.”²⁷ As the parties point out, there is no past behavior of QLDC on which to predict whether it will comply with GAAP.²⁸ As stated by AT&T, basic accounting principles require “a proven history of compliance before a company can be considered to have reliable financial statements.”²⁹ In fact, AT&T demonstrates that even in the short period of time of QLDC’s existence, QLDC has already violated certain of the section 272 safeguards.³⁰ Indeed, the only entities with past behavior available for analysis – that of QCC or QC –are plagued by accounting irregularities.³¹ Future promises of compliance are clearly insufficient,³² and, given Qwest’s history, totally unreliable.

Moreover, the comments make clear that QLDC is nothing but a sham, designed by Qwest to try to circumvent its statutory obligations. Qwest has provided virtually no information as to how this new entity will provide long distance service throughout a 9-state region. As AT&T notes, QLDC has little to no assets and few employees who occupy only a small month-

²⁷ See *In the Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, 15 FCC Rcd. 3953, at ¶ 402 (1999), *aff’d AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

²⁸ See WorldCom Comments at 19; AT&T Comments at 9 & 24.

²⁹ See AT&T Comments at 24.

³⁰ See AT&T Comments at 30-40 (demonstrating that Qwest (1) has failed to show that “QLDC has paid anything for the myriad of capabilities and assets it now trumpets make it ready to enter the interLATA market in compliance with section 272,” thereby permitting the potential for anticompetitive BOC subsidies; (2) has failed to demonstrate compliance with the “separate employee” requirements and joint-marketing restrictions of section 272; and (3) violates the requirement that all transactions between the BOC and its long distance affiliate be “on an arm’s length basis”).

³¹ See August 20, 2002 letter from Oren G. Shaffer, Vice Chairman and Chief Financial Officer, Qwest Communications International Inc., to Marlene Dortch, Secretary, Federal Communications Commission (filed in WC Docket Nos. 02-148 and 02-189).

³² See *Michigan 271 Order* at ¶ 55 (“evidence demonstrating that a BOC intends to come

to-month office space within QC's offices, a situation that is obviously not capable of providing retail long distance services in nine states.³³ It is therefore highly likely that QLDC will be relying on the employees of QCC or QC to conduct its business, fully undermining the "separate employees" requirement of the Act.³⁴ Indeed, until recently, Ms. Brunsting, who is now serving as the President of QLDC,³⁵ was a Senior Director of QCC.³⁶

The Commission must pierce through the corporate veil of QLDC to ascertain what is really going on here.³⁷ All evidence indicates that QCC, not QLDC, will ultimately serve as Qwest's long distance affiliate.³⁸ As stated by WorldCom, Qwest has made clear that it has no intention of using QLDC for any length of time after it gains section 271 authority, and that as

into compliance with the requirements of section 271 by day 90 is insufficient").

³³ See AT&T's Comments at 19-23.

³⁴ *Id.* at 32.

³⁵ See Brunsting Section 272 Declaration at 1, filed in WC Docket No. 02-314.

³⁶ See Exhibit JLB-272-1 at ¶1. Moreover, although Ms. Brunsting is not a lawyer, she is asserting compliance with the law. See, e.g., Brunsting Section 272 Declaration at ¶8 ("I will demonstrate that, following Qwest's receipt of in-region interLATA authority, QLDC will satisfy all of the relevant requirements of Section 272 and the related rules directed by the Commission").

³⁷ See *Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, and 101 of the Commission's Rules*, CC Docket No. 98-141, 14 FCC Rcd. 14712, ¶ 454, (1999)(in determining whether substantial continuity exists between two companies such that one company is the successor of another, the focus is on whether the company had "acquired substantial assets of its predecessor and continued, without interruption or substantial change, the predecessor's business"); *General Telephone Co. of the Southwest v. U.S.*, 449 F.2d 846, 855 (5th Cir. 1971) ("where the statutory purpose could [] be easily frustrated through the use of separate corporate entities, the Commission is entitled to look through the corporate form and treat the separate affiliate as one and the same for purposes of regulation"); *Mansfield Journal Co. v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950)(the Commission is entitled to "look beyond the corporate name, and notice the character of the individual").

³⁸ See AT&T Comments at 20 ("the reality, of course, is that QC, the BOC, and QCC, Qwest's real long distance business unit, will be the actual "providers" of long distance service in every meaningful sense of the word").

soon as possible it will start using its previous affiliate, QCC, to provide long distance.³⁹ WorldCom correctly concludes that it would be contrary to sound public policy for the Commission to approve such a tactic “because the section 272 affiliate that Qwest would have the Commission bless is not the affiliate that Qwest ultimately will use to provide long distance service.”⁴⁰

B. The consultative role of the state commissions and the Department of Justice has been compromised in Qwest’s efforts to “hurry up” its Application.

Despite the fact that the state commissions have undertaken lengthy analyses of Qwest’s compliance with section 272, Qwest’s ongoing efforts to press ahead with its Application at all costs have denied the state commissions the opportunity to evaluate QLDC and its compliance with section 272 of the Act. For example, the Montana PSC acknowledges that it “has not reviewed Qwest’s new affiliate and cannot make a recommendation with regard to the new affiliate and the 272 record.”⁴¹ Similarly, the Colorado Public Utilities Commission stated that it “did not conduct further inquiry into the § 272-related issues following the termination of WC Docket No. 02-148” and, as a consequence, it has no comments on this issue beyond that contained in its filings in WC Docket No. 02-148.⁴² The Department of Justice (“DoJ”) has likewise left the issue for resolution by the Commission.⁴³

³⁹ See WorldCom Comments at 20.

⁴⁰ *Id.* at 20.

⁴¹ See Montana PSC Comments at 1. See also, Comments of the Nebraska Public Service Commission (“Nebraska PSC Comments”) at 1 (“Qwest did not seek the Nebraska Commission’s approval of its new 272 affiliate prior to refiling its current application with the FCC . . .”).

⁴² See Comments of the Colorado Public Utilities Commission at 3.

⁴³ See DoJ Comments at 9 (“[t]he Department relies on the Commission to make the ultimate determination regarding Qwest’s compliance with the regulations implementing Section 272 and supports the Commission’s resolve to investigate this matter”).

**TOUCH AMERICA REPLY
QWEST 271 APPLICATION
CO, ID, IA, MT, NE, ND
UT, WA AND WY**

The absence of the consultative role of the state commissions and the DoJ on this important issue raises questions as to the credibility of the record. Over the past several years, the state commissions have undertaken extensive evaluations of Qwest's long distance affiliate and its section 272 obligations, yet, they are now being required to punt that obligation to this Commission. The Commission should not eclipse the state commissions' interest in ensuring section 272 compliance. Commissioner Susan E Wefald of the North Dakota Public Service Commission perhaps put it best:

In the Consultative Report of the North Dakota Public Service Commission, dated July 1, 2002, the Commission devoted 16 pages of its comments to Section 272 Separate Affiliate. This was an important part of our report to the Federal Communications Commission (FCC). These issues are still important as they involve the new company established by Qwest to handle its interstate long distance. However, Qwest filed its new 271 application with the FCC on September 30 and the FCC gave the states 15 days to file comments. Therefore, the main reason we cannot file comments on Section 272, Separate Affiliate issues is due to lack of time.⁴⁴

Because the state commissions and the DoJ have been taken out of the picture, all we are left with is Qwest's own claims of compliance with section 272. Specifically, we are asked to believe the assertions of two declarants who have already recanted their previous testimony on the very same issue. Clearly, this is insufficient. The Commission must not be lulled into adopting Qwest's "hurry up" attitude, but must seriously and comprehensively address Qwest's compliance with section 272 and ensure that Qwest has, in all respects, met its obligations under that section. Future evaluations or audits of QLDC and its relationship with QC⁴⁵ is not

⁴⁴ See Concurring Opinion of Commissioner Susan E. Wefald, Supplemental Comments of the North Dakota Public Service Commission at 1.

⁴⁵ See, e.g., Written Consultation of the Idaho Public Utilities Commission at 2 ("[g]iven the short time period between the withdrawal of Qwest's initial FCC application and its re-filing on September 30, the IPUC did not attempt to re-open its review of Qwest's ability to comply

sufficient. Qwest must be made to demonstrate compliance with section 272 of the Act now, not later. It has failed to do so and, as such, its Application should be denied.

C. The comments make clear that Qwest continues to violate its section 252 obligations and its Application must therefore be denied.

Qwest asserts that, as a result of its recent filings with state commissions and posting on its website of previously unfiled contracts with CLECs, it “is in compliance with Section 252 under any reading of the Act, and hence this matter presents no Section 271 issue.”⁴⁶ The comments in this proceeding demonstrate, to the contrary, that Qwest continues to violate section 252 of the Act through its refusal to file certain agreements with CLECs – written and oral – with state commissions and make them publicly available on its website. As a result, Qwest’s Application must be denied.

For instance, AT&T has identified a number of written interconnection agreements that Qwest has failed to file with the state commissions or post on its website.⁴⁷ Furthermore, the Minnesota Public Utilities Commission (“Minnesota PUC”) has confirmed the existence of at least one oral secret agreement, with McLeod.⁴⁸ Although Qwest had emphatically denied the existence of this oral agreement, only through the perseverance of state investigators has it been

with Section 272 requirements” but “will continue to review Qwest’s continued compliance by future audits of records between Qwest and its 272 affiliate).

⁴⁶ See Application at 7-9.

⁴⁷ See AT&T Comments at 46-48. Specifically, AT&T has identified 17 interconnection agreements that the Arizona Commerce Commission staff recommended be filed and made public and 15 additional agreements that, in AT&T’s belief, also constitute interconnection agreements subject to the filing obligations.

⁴⁸ See *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Docket No. P-421/C-02-197, 6-2500-14782-2, Findings of Fact, Conclusions, Recommendation and Memorandum (issued Sept. 20, 2002).

brought to light. The New Mexico Commission also recently found that “there may exist additional agreements that should be filed.”⁴⁹

The Minnesota PUC has also now affirmed the findings of its Administrative Law Judge that Qwest had “knowingly and intentionally” violated state law and sections 251 and 252 of the Act by failing to file certain CLEC agreements and make them available to competitors.⁵⁰ The Minnesota PUC has indicated its intention to deal seriously with the transgressions.⁵¹ In fact, Gregory Scott, chairman of the Minnesota PUC, stated that “the findings against Qwest were so condemning that the state needs to consider every possible remedy, including withdrawing the company's authority to do business in the state . . . [e]verything needs to be on the table.”⁵² This Commission must likewise deal seriously with Qwest’s conduct, particularly given that history has shown that a slap on the wrist does nothing to reform Qwest’s behavior.

These findings raise the obvious question of how many secret agreements still exist – oral or written – that Qwest has attempted to shield from its statutory obligations? Mere claims by Qwest that it has filed all agreements does not suffice, as demonstrated by the history of the McLeod oral agreement and Qwest’s continued pattern of evasive tactics. Questions also remain as to the effect of the secret agreements – and Qwest’s efforts to silence opposition through such

⁴⁹ See WorldCom Comments at 21 (citing *In the re Qwest Corporation’s Section 271 Application and Motion for Alternative Procedure to Manage the Section 271 Process*, Utility Case No. 3269, Final Order Regarding Compliance with Outstanding Section 271 Requirements, SGAT Compliance, Track A, and Public Interest, at ¶297 (N.M.Pub.Reg.Comm’n Oct. 8, 2002)). Similarly, PageData shows that Qwest is refusing to file other agreements – specifically CMRS interconnection agreements – in all of its states, thereby, among other things, denying competitors their statutory right to “pick and choose.” See Comments of PageData at 1-5.

⁵⁰ See D. Solomon, “Minnesota Censures Qwest For Secret Deals With Rivals, Ruling Qwest Violated Federal Law, State May Bar Firm, Force a Breakup,” The Wall Street Journal (attached hereto as Exhibit B).

⁵¹ *Id.*

agreements – on the record in this proceeding. Indeed, the Nebraska Public Service Commission, confirming that Qwest filed for approval, and it subsequently approved, ten negotiated agreements between Qwest and CLECs, stated that “[n]onetheless, [it] cannot say for certain that such previously undisclosed agreements did not impact the validity of the testing that was undertaken to demonstrate Qwest’s compliance with the Section 271 checklist.”⁵³ This reason alone, notwithstanding Qwest’s ongoing failure to comply with its section 252 obligations, compels denial of the Application. The Commission must allow for a comprehensive investigation and resolution of these issues before Qwest is granted 271 authority.

D. Qwest has failed to demonstrate that it has cured the other deficiencies in its Application.

The comments make evident that this Application does not turn on resolution of the section 272 issue or, for that matter, the issues surrounding the “secret” agreements. The comments are replete with examples of other deficiencies that Qwest has failed to cure. The following are examples of some of the outstanding issues, which are representative of matters that are at the heart of section 271 compliance and the ability of CLECs to compete on a level playing field:

- Numerous OSS deficiencies, including overly complex pre-ordering and ordering processes,⁵⁴ incomplete or inaccurate business rules,⁵⁵ and erroneous completion notices⁵⁶
- Qwest’s refusal to provide competitors with non-discriminatory access to MLT information⁵⁷

⁵² *Id.* at 1.

⁵³ *See* Nebraska PSC Comments at 1-2.

⁵⁴ *See* WorldCom Comments at 3-8; AT&T Comments at 58-61.

⁵⁵ *See* WorldCom Comments at 12.

⁵⁶ *Id.* at 15.

⁵⁷ *See* AT&T Comments at 51-57.

- High UNE rates that are resulting in a price squeeze that precludes competitive entry⁵⁸
- Lack of electronic auditability and erroneous wholesale bills⁵⁹
- Absence of a test environment that mirrors production⁶⁰
- An inordinately high percentage of rejected orders and orders that are manually processed by Qwest⁶¹
- Qwest's failures to abide by its Change Management Plan⁶²
- Qwest's refusal to provide customized routing to CLECs⁶³
- Qwest's failure to capture in its tested performance measures service-affecting troubles that occur shortly after installation⁶⁴
- Unlawful interconnection policies⁶⁵
- Inadequate number portability system processes, that result in customer outages⁶⁶

⁵⁸ See WorldCom Comments at 25-26; Comments of the Montana PSC at 2-3; AT&T Comments at 69-80; Comments of Covad Communications Company ("Covad Comments") at 3-15; Comments of OneEighty Communications, Inc. ("OneEighty Comments") at 2-6; Comments of Integra Telecom, Inc. at 2-15.

⁵⁹ See AT&T Comments at 62-64; Comments of Eschelon Telecom, Inc. ("Eschelon Comments") at 6.

⁶⁰ See WorldCom Comments at 16-17; AT&T Comments at 64-65.

⁶¹ See AT&T Comments at 61-62.

⁶² See WorldCom Comments at 18.

⁶³ *Id.* at 26.

⁶⁴ See Eschelon Comments at 6.

⁶⁵ See Comments of Level 3 Communications, LLC at 1-9.

⁶⁶ See OneEighty Comments at 9. Moreover, with respect to Qwest's recent offer to provide router testing for competitors' UNE line shared loops, the state commissions must ensure that Qwest fully implements its offer in a nondiscriminatory manner. Specifically, as stated by the DoJ, Qwest should be required to commit to conduct by the end of the first quarter of 2003 router testing in central offices ("COs") where it already does testing for its own retail customers, at no additional charge to CLECs, and to implement such testing in additional COs for the benefit of CLECs as it does so for retail customers. See DoJ Comments at 8; Covad Comments at 2.

By withdrawing its Application, Qwest provided itself the opportunity to remedy these problems. It chose not to and, as such, its Application must be denied.

III. CONCLUSION

Qwest is trying to push through its Application as quickly as possible, most likely to avoid any further revelations of anticompetitive and unlawful conduct. As evidence continues to mount against Qwest – related to its accounting practices and resulting restatements of earnings, the existence of secret agreements, possible criminal behavior, withheld information and consumer-related fines – Qwest is eager to get its “stamp of approval” before more is uncovered and brought to light. The comments in this proceeding make clear that the train needs to be stopped. The Commission must ensure that Qwest has put before the Commission the true section 272 affiliate, and that such affiliate is capable of providing its services within the confines of the law. Inasmuch as QLDC has adopted the accounting policies, guidelines and controls that govern the rest of Qwest’s corporate family, Qwest must demonstrate how QLDC will not fall prey to the same accounting problems that has befallen its sister and parent companies. The Commission must also be certain that Qwest has fully complied with its obligations under section 252 of the Act. Finally, the Commission must be satisfied that Qwest satisfies the competitive checklist and meets its obligations to competitors. The comments make clear that Qwest has failed to provide sufficient evidence to enable the Commission to make an affirmative determination with respect to these issues and, indeed, that a negative finding is in order. As a result, the Application must be denied.

**TOUCH AMERICA REPLY
QWEST 271 APPLICATION
CO, ID, IA, MT, NE, ND
UT, WA AND WY**

Respectfully submitted,

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ATTORNEYS FOR TOUCH AMERICA, INC.

October 25, 2002

**TOUCH AMERICA REPLY
QWEST 271 APPLICATION
CO, ID, IA, MT, NE, ND
UT, WA AND WY**

EXHIBIT A

Qwest's August 8 Press Release



[Back to Press Releases](#)

Qwest Communications Reports Second Quarter 2002 Results; Achieves Positive Free Cash Flow; Revises Guidance For Remainder Of 2002

Investors: Please see definitions of terms used in the "Note to Investors" below.

DENVER, August 8, 2002 — Qwest Communications International Inc. (NYSE: Q) today announced its financial results for the second quarter of 2002. On a reported basis, the company reported a net loss of (\$1.14) billion or (\$0.68) per share, compared to a net loss of (\$3.31) billion or (\$1.99) per share in the second quarter of 2001.

The loss reflects after-tax non-operating items of \$926 million, or \$0.55 per diluted share, due primarily to the write-down of the company's remaining investment in KPNQwest which totaled \$740 million, increased bad debt reserves of \$119 million associated with the WorldCom, Inc. bankruptcy, and asset impairments on real estate held for sale of \$59 million. After adjusting for these charges and certain other non-operating items, the company recorded a (\$0.13) normalized loss per diluted share compared with normalized earnings per share of \$0.08 for the same period last year.

Free cash flow, defined as cash flow from operations less capital expenditures, totaled \$320 million in the quarter. This reflects the company's reduced capital investment and continued management of working capital. For the quarter, capital expenditures were \$618 million, down from \$2.62 billion in the same period last year.

"We are aggressively taking the steps necessary to maximize the profitability of our core operations, delever our balance sheet and improve the delivery of services to our customers," said Richard C. Notebaert, Qwest's chairman and CEO. "I'm confident we have the right people and the right plan to deliver on both our short-term and long-term objectives."

Reported revenue for the quarter decreased 17.3 percent to \$4.32 billion from \$5.22 billion in the same period last year primarily due to the absence of optical capacity asset sales and certain Internet Protocol (IP) equipment sales. Recurring revenue declined approximately six percent to \$4.32 billion as compared to \$4.59 billion in the second quarter of 2001.

Recurring revenue for local and long-distance voice services for the quarter declined \$231 million, or approximately eight percent compared to the same period last year, primarily due to industry pressures and the company's efforts to focus on more profitable products and lines of business.

Recurring revenue for data and Internet services declined 2.5 percent or \$26 million in the second quarter of 2002, compared with the same period last year.

Wireless services increased approximately four percent or \$7 million compared to the same period last year. The company had more than 1.1 million wireless customers at

the end of the second quarter 2002, 11.5 percent more than at the end of the second quarter of 2001. In addition, total quarterly DSL (digital subscriber line) revenues increased approximately 81 percent or \$21 million year-over-year. Total DSL customers, including in-region and out-of-region customers, increased to 508,000 at the end of the second quarter 2002, a 37 percent increase from the same period of 2001.

For the quarter, adjusted EBITDA (adjusted earnings before interest, taxes, depreciation and amortization) was \$1.26 billion compared with adjusted EBITDA for the same period last year of \$2.0 billion. This decline was mainly due to the absence of optical capacity asset sales and certain IP equipment sales, the company's continued investment in product platforms for dial Internet access and managed wavelength services, and certain unanticipated expenses recognized within the quarter for increased litigation risk and write-downs of certain inventory and assets.

As previously announced in a press release on July 28, 2002, the company expects to restate prior periods as a result of its determination that certain accounting policies may have been inappropriately applied and certain transactions were recorded incorrectly. The company is consulting with its new external auditors, KPMG LLP, on the scope of a restatement and what adjustments would be required. Until such time as these efforts have been concluded, the company cannot indicate the extent to which the results for 2000 - 2002 will be impacted.

The company is continuing to analyze its accounting policies and practices in consultation with its new auditors. In addition, the company has commenced a review of its internal controls. Qwest will attempt to conclude these analyses promptly. However, as a result of the change in auditors and the ongoing investigation by the U.S. Securities and Exchange Commission, the company cannot state with certainty when a restatement will be completed.

Accordingly, the company anticipates it will not be in a position to timely file its Quarterly Report on Form 10-Q. It expects to provide by August 19, 2002 more detailed financial disclosure about the second quarter, material trends related to its results of operations and its current liquidity and capital resources on a Form 8-K. This additional information will not be a substitute for the disclosure required in the Form 10-Q; however, until the company can file the Form 10-Q, it will provide as much relevant material financial information as it can that is of the type included in a Form 10-Q. Qwest will attempt to file the second quarter Form 10-Q as soon as it has sufficient certainty of the impact on this period of the expected restatement.

FINANCIAL GUIDANCE

Qwest announced revised financial guidance for full year 2002. The company expects its near-term outlook to continue to be affected by industry, competitive and economic conditions. Accordingly, Qwest expects total revenue in the range of \$17.1 - \$17.4 billion, adjusted EBITDA in the range of \$5.4 - \$5.6 billion, capital expenditures in the range of \$3.0 - \$3.1 billion, and a normalized loss per share of (\$0.46) - (\$0.49). In addition, the company expects to be cash flow positive for 2002. This guidance includes the results of QwestDex for all periods in 2002.

MARKET SEGMENTS

BUSINESS SERVICES

Recurring business services revenues for the quarter totaled \$1.55 billion. Excluding optical capacity asset and certain IP equipment sales of \$69 million from the second quarter of 2001, business services revenues declined 2.4 percent versus the same period last year. Growth in recurring data and Internet services of eight percent was offset by declines in local and long-distance voice revenues of approximately eight percent.

Qwest continues to expand its share of enterprise business and government customers and during the quarter signed agreements to provide services to the National Oceanic and Atmospheric Administration (NOAA), Flagstar Bank, Honeywell and Allegheny Power.

CONSUMER SERVICES

Consumer services revenues totaled \$1.41 billion, representing a decrease of 4.8 percent, or \$71 million, compared with the second quarter of 2001. Continued growth in DSL and wireless services was offset by a decline in consumer access lines of 4.6 percent and continued efforts to improve profitability by slowing the company's acquisition efforts of out-of-region long-distance customers.

As of June 30, 2002, approximately 37 percent of Qwest in-region consumer customers subscribed to a package, or bundle, of services that may include Internet access, DSL, wireless, voice messaging, caller identification or additional lines. This represents an increase of 24 percent over the second quarter 2001.

WHOLESALE SERVICES

Recurring wholesale services revenues totaled \$995 million. Excluding optical capacity asset sales and certain IP equipment sales of \$566 million from the second quarter of 2001, revenues declined approximately 12 percent versus the same period last year. The decline is attributable mainly to reduced volumes and mandated rate reductions for switched access services, lower demand for in-region co-location and billing and collection services, and increased pricing on certain voice products to improve profitability.

DIRECTORY SERVICES

Directory services revenues decreased less than one percent, or \$3 million, primarily due to the extension of the life of 15 directories in 2001 from 12 months to 13 months offsetting increased advertising rates in 2002. All books published in the second quarter of 2002 had 12 month service lives.

UPDATE ON IMPAIRMENT CHARGES

As previously announced, Qwest expects an impairment of the carrying amount of its goodwill upon adoption of FASB Statement No. 142. The company's new auditors are reviewing the methodology for determining the impairment. As a result, Qwest has not recorded an impairment charge within the current quarter, but expects to do so at a later date. In addition, the company believes certain network assets are impaired and additional charges will be required in accordance FASB Statement No. 144. The company is in the process of quantifying the impact of the impairment and believes it will be material.

BALANCE SHEET AND LIQUIDITY

Qwest has informed the agent bank under its credit facility that it is in compliance with the financial covenants in the credit facility, and Qwest is in compliance with the financial covenants in its indentures, each as of June 30, 2002.

The company has been in discussions with Bank of America, the administrative agent for its syndicated credit facility, about restructuring the facility. The company currently expects that the administrative agent will approach the credit facility lenders within the next week to begin to seek approval for a restructuring proposal that would extend the maturity of the credit facility and modify the financial covenants.

In addition, Banc of America Securities LLC has agreed to act as sole arranger and sole book runner for a proposed \$500 million Senior Secured Credit Facility at the company's QwestDex, Inc. subsidiary. The company has obtained a commitment from an affiliate of Bank of America for \$200 million of this proposed new facility. The commitment is subject to completion of the restructuring of the existing syndicated credit facility and other customary closing conditions for a facility of this type, including the parties entering into definitive agreements. The company believes it will be able to complete the new facility and the restructuring of its existing credit facility in the third quarter; however, there can be no assurance that either can be completed in that time frame or on terms satisfactory to the company.

The company continues its efforts to delever its balance sheet. The sale of QwestDex is the most significant of these efforts. The company is in late stage negotiations with bidders to sell all or part of QwestDex.

NOTE TO INVESTORS

"Reported" results in the applicable period are prepared in accordance with what the company believed, at the relevant time, were generally accepted accounting principles in the United States (GAAP). Since the company is analyzing its accounting policies and practices, the results in prior periods may be determined not to have been in accordance with GAAP. Recurring and adjusted or normalized results are not prepared in accordance with GAAP.

"Recurring" results reflect adjustments made for optical capacity asset sales revenue, certain IP equipment sales and other items, such as contractual settlements in the periods presented. The IP equipment sales for which our results have been adjusted to derive "recurring" results primarily include individually large and infrequent wholesale sales. For the three months ended June 30, 2002 and June 30, 2001, the recurring revenue adjustments were \$0 and \$635 million, respectively.

"Free cash flow" results reflect cash flow from operations less capital expenditures.

"Normalized" results reflect adjustments to eliminate the impacts of non-recurring and non-operating items, which for the relevant periods may include merger-related and other charges, gains (losses) on the sale of rural exchanges, gains (losses) on the sale of investments, depreciation adjustment for access lines returned to service, the write-down of investments, KPNQwest restructuring charges, changes in the market value of financial instruments, gains (losses) on discontinued operations, asset impairments on real estate held for sale and gains (losses) on the early retirement of debt. In addition, the company normalized in the second quarter for the increased bad debt reserves associated with the WorldCom, Inc. bankruptcy consistent with other telecommunications providers. For additional details on these adjustments, readers

should refer to Attachments C and D.

"Adjusted EBITDA" excludes all items adjusted as a normalizing item. Adjusted EBITDA does not represent cash flow for the periods presented and should not be considered as an alternative to cash flows as a source of liquidity. Qwest's definition of adjusted EBITDA is not necessarily comparable with adjusted EBITDA or similar non-GAAP concepts used by other companies or with similar concepts used in Qwest's debt instruments. Adjusted EBITDA is provided as a complement to the financial results reported in accordance with GAAP and is presented to provide investors additional information concerning the company's operations. The adjusted EBITDA for the three months ended June 30, 2002 is the same as the number calculated by the company for the same period under the credit facility definition. The covenant under the credit facility requires a comparison of debt to Consolidated EBITDA for the most recent four quarters, and on this basis, as of June 30, 2002 the total adjusted EBITDA for the four quarters ended June 30, 2002 is .23 percent higher than the number calculated by the company for the same period under the credit facility definition.

Certain reclassifications have been made to prior periods to conform to the current presentation.

CONFERENCE CALL TODAY

As previously announced, Qwest will host a conference call for investors and the media today at 9:00 a.m. (EDT) with Notebaert and Oren Shaffer, Qwest vice chairman and CFO. The call may be heard on the Web at www.qwest.com/about/investor/meetings.

Attachments

About Qwest

Qwest Communications International Inc. (NYSE: Q) is a leader in reliable, scalable and secure broadband data, voice and image communications for businesses and consumers. The Qwest Macro Capacity® Fiber Network, designed with the newest optical networking equipment for speed and efficiency, spans more than 175,000 miles globally. For more information, please visit the Qwest Web site at www.qwest.com.

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This release may contain projections and other forward-looking statements that involve assumptions, risks and uncertainties. Readers are cautioned not to place undue reliance on these statements, which speak only as of the date of this release. These statements may differ materially from actual future events or results. Readers are referred to the documents filed by Qwest Communications International Inc. (together with its affiliates, "Qwest", "we" or "us") with the Securities and Exchange Commission (the "SEC"), specifically the most recent reports which identify important risk factors that could cause actual results to differ from those contained in the forward-looking statements, including but not limited to: the duration and extent of the current economic downturn in our 14-state local service area, including its effect on our customers and suppliers; any adverse outcome of the SEC's current inquiries into Qwest's accounting policies, practices and procedures; adverse results of increased review and scrutiny by the Department of Justice, other regulatory authorities, media and others (including any internal analyses) of financial reporting issues and practices or otherwise; rapid and significant changes in technology and markets; failure to achieve the projected synergies and financial results expected to result from the

acquisition of U S WEST, and difficulties in combining the operations of the combined company; our future ability to provide interLATA services within our 14-state local service area; potential fluctuations in quarterly results; volatility of Qwest's stock price; intense competition in the markets in which we compete; changes in demand for our products and services; dependence on new product development and acceleration of the deployment of advanced new services, such as broadband data, wireless and video services, which could require substantial expenditure of financial and other resources in excess of contemplated levels; higher than anticipated employee levels, capital expenditures and operating expenses; adverse changes in the regulatory or legislative environment affecting our business; adverse developments in commercial disputes or legal proceedings; and changes in the outcome of future events from the assumed outcome included by Qwest in its significant accounting policies. The information contained in this release is a statement of Qwest's present intention, belief or expectation and is based upon, among other things, the existing regulatory environment, industry conditions, market conditions and prices, the economy in general and Qwest's assumptions. Qwest may change its intention, belief or expectation, at any time and without notice, based upon any changes in such factors, in Qwest's assumptions or otherwise. The cautionary statements contained or referred to in this release should be considered in connection with any subsequent written or oral forward looking statements that Qwest or persons acting on its behalf may issue. This release may include analysts' estimates and other information prepared by third parties for which Qwest assumes no responsibility. Qwest undertakes no obligation to review or confirm analysts' expectations or estimates or to release publicly any revisions to any forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. The Qwest logo is a registered trademark of, and CyberCenter is a service mark of, Qwest Communications International Inc. in the U.S. and certain other countries. **Contact Information:**

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Exhibit B

Wall Street Journal Article Regarding the Minnesota Decision

Minnesota Censures Qwest
For Secret Deals With Rivals
**Ruling Qwest Violated Federal Law,
State May Bar Firm, Force a Breakup**

By **DEBORAH SOLOMON**
Staff Reporter of THE WALL STREET JOURNAL

[Qwest Communications International](#) Inc. violated federal law when it made secret agreements with competitors, the Minnesota Public Utilities Commission has ruled.

As a result, the commission is considering barring Qwest from selling phone service in the state or forcing it to split its business in two pieces. The state's ruling could pose serious challenges for Qwest, which is under investigation by state agencies for similar agreements it struck throughout its 14-state territory.

Minnesota regulators agreed with a state administrative-law judge, who found Qwest had violated federal law 25 times by striking agreements that gave favored carriers better terms for the use of parts of Qwest's local-phone network.

As part of the deals, the carriers agreed not to interfere with the Denver phone company's efforts to expand its long-distance business or fight its 1999 merger with US West Inc. None of the deals was disclosed to state regulators.

Steve Davis, Qwest's senior vice president of policy and law, said the company was "disappointed" with the commission's ruling and said Qwest is complying with state and federal laws regarding disclosure of contracts

Gregory Scott, chairman of the Minnesota commission, said the findings against Qwest were so condemning that the state needs to consider every possible remedy, including withdrawing the company's authority to do business in the state. "Everything needs to be on the table," he said.

Mr. Scott said the state also could impose a multimillion dollar fine or force Qwest to split itself into separate wholesale and retail businesses, which would put all customers on equal-pricing ground, including Qwest. Regulators are scheduled to set penalties against Qwest Nov. 19.

Mr. Davis said neither barring the company from operating in Minnesota nor splitting the company apart is a good solution. "There's no possibility that's the right answer," he said.

In 4 p.m. New York Stock Exchange composite trading Tuesday, Qwest shares rose 15 cents, or 5%, to \$3.15 each.

Separately, the Justice Department urged the Federal Communications Commission to approve Qwest's application to provide long-distance service in nine states -- Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming.

The Justice Department said evidence suggests Qwest has opened its local-phone markets in those states to competition, but it also advised the FCC to look at Qwest's pricing of unbundled network elements.

The company had withdrawn earlier applications with the FCC last month after the agency raised questions about accounting problems at Qwest.

Write to Deborah Solomon at deborah.solomon@wsj.com

Updated October 23, 2002

<http://online.wsj.com/article/0,,SB1035310146983858151,00.html?mod=telecommunications%5Fprimary%5Fhs>

**TOUCH AMERICA REPLY
QWEST 271 APPLICATION
CO, ID, IA, MT, NE, ND
UT, WA AND WY**

CERTIFICATE OF SERVICE

I, Donna Sanchez-Arango, do hereby certify that on this 25th day of October, 2002, a copy of the foregoing Reply filed on behalf of Touch America, Inc. in WC Docket No. 02-314, was served by U.S. Mail, postage prepaid, to the parties on the attached service list.

/s/

Donna Sanchez-Arango

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